

BROWN FIELD  
Hazardous Waste Site

SFUND RECORDS CTR  
2230154

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13 215 Fremont Street  
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14 Attorneys for the United States

16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,  
19 Plaintiff,

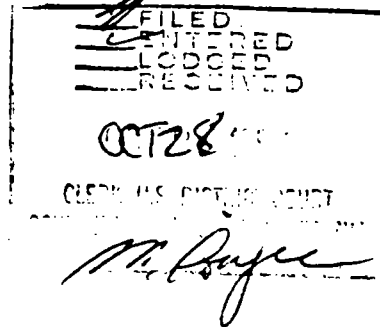
20 v.

21 MELVYN INGALLS,  
ALBERT MANGRUM;  
22 HERMAN AVILEZ;  
JACK E. RUST; and  
23 INDUSTRIAL INTERNATIONAL CORP.

24 Defendants.

CIV. ACTION NO. 85-0282-GT(IEG)  
CONSENT DECREE

25 This decree is entered into by the Plaintiff, United  
26 States of America, on behalf of the United States Environmental



1 Protection Agency ("EPA") and the Defendants, Melvyn Ingalls,  
2 Albert Mangrum, Herman Avilez, Jack E. Rust and Industrial  
3 International Corp. (hereinafter collectively referred to as  
4 "Defendants").

5 WHEREAS, the United States incurred costs in connection  
6 with cleanup activities undertaken during June, July and August  
7 of 1983 at a site located in 5675 Otay Valley Road, Chula  
8 Vista, California, known as the Brown Field site;

9 WHEREAS, the United States alleges in its Complaint  
10 that Defendants are liable under Section 107(a) of the Compre-  
11 hensive Environmental Response, Compensation, and Liability  
12 Act, 42 U.S.C. § 9607, for the response costs incurred by the  
13 United States in connection with the cleanup of the Brown Field  
14 site;

15 WHEREAS, Plaintiff and Defendants agree that settlement  
16 of this matter is made in good faith and in an effort to avoid  
17 further litigation without any admission as to liability for  
18 any purpose;

19 WHEREAS, to accomplish the objectives set forth in  
20 this Decree, the parties have agreed that it is in the public  
21 interest and in the interest of the parties for this case to be  
22 resolved without the necessity of continued litigation and  
23 before the taking of any testimony and without the adjudication  
24 of any issue of fact or law;

25 //

26 //

1 NOW THEREFORE, it is ordered, Adjudged and Decreed:

2 I

3 JURISDICTION

4 This Court has jurisdiction over the parties and  
5 subject matter of this action pursuant to 42 U.S.C. §§ 9613(b),  
6 9607(a) and 9604.

7 II

8 PARTIES BOUND

9 A. The provisions of this Consent Decree apply to  
10 and are binding upon the Defendants, their officers, directors,  
11 agents, servants, employees, successors, and assigns, and upon  
12 the United States on behalf of the EPA.

13 B. The undersigned representatives of the Plaintiff  
14 and Defendants certify that they are fully authorized to enter  
15 into the terms and conditions of this decree and to execute and  
16 legally bind the parties.

17 III

18 RESPONSE COSTS

19 A. Melvyn Ingalls agrees to pay the United States  
20 a total amount of \$50,000. Payment shall be made by certified  
21 check within thirty days of the date of entry of this Decree.

22 B. Albert Mangrum agrees to pay the United States a  
23 total amount of \$25,000. Payment shall be made by certified  
24 check as follows: \$15,000 within 30 days of the date of entry  
25 of this Decree; and \$10,000 within one year of the date entry of  
26 this Decree.

1 C. Herman Avilez agrees to pay the United States a  
2 total amount of \$15,000. Payment shall be made by certified  
3 check as follows: \$5,000 within thirty days of the date of  
4 entry of this Decree; and \$10,000 within one year of the date  
5 of entry of the Decree.

6 D. Jack E. Rust and Industrial International Corp.  
7 (IIC) agree to pay the United States a total amount of \$10,000.  
8 Payment shall be made by certified check within one year of the  
9 date of entry of this Decree.

10 E. The certified checks shall be made payable to  
11 "EPA Hazardous Substances Response Trust Fund" and shall be  
12 remitted to EPA Superfund, P.O. Box 371003M, Pittsburgh,  
13 Pennsylvania 15251. The check shall be accompanied by corre-  
14 spondence identifying the paying party, case name, court, civil  
15 action number, Department of Justice file number (90-11-2-90),  
16 and EPA file number (9532). Simultaneously with the tender of  
17 such payment, notice of payment, including a copy of the check,  
18 shall be mailed to EPA and the United States Department of  
19 Justice.

20 IV

21 STIPULATED PENALTIES

22 A. Defendants shall pay stipulated penalties for  
23 failure to make timely payments as specified in Section III above.  
24 Stipulated penalties will accrue as follows: \$100 per day for  
25 the first seven days of noncompliance; \$200 per day for the  
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1 eighth through the fourteenth day of noncompliance; \$300 per  
2 day for the fifteenth through the twenty-first day of noncompli-  
3 ance; \$400 per day for the twenty-second through the twenty-  
4 eighth day of noncompliance; and \$500 per day thereafter.

B. Any payment of stipulated penalties by any Defendant due pursuant to this section shall be paid by that Defendant within ten days of the date penalties are incurred. Payment shall be made by certified check payable to the Treasurer of the United States of America, and shall be delivered to the Office of the United States Attorney, San Diego, California. The check must be accompanied by correspondence identifying the paying party, court, civil action number, Department of Justice file number, and the EPA file number. Simultaneously with the tender of such payment, notice of payment, including a copy of the check, shall be mailed to EPA and to the United States Department of Justice. Stipulated penalties paid pursuant to this Paragraph shall be in addition to, and shall not preclude the use of, any other remedies or sanctions that may be available to the United States to enforce this Consent Decree.

## VI

PLAINTIFF'S RELEASE

A. In consideration of the payments set forth in Sections III and IV above, the United States releases Defendants for the response costs incurred by the United States at the

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1 Brown Field site up to and including the date of entry of this  
2 Decree, pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C.  
3 §§ 9604, 9607.

4 B. This release shall not become effective as to  
5 any Defendant until the timely payment by that Defendant of  
6 the amounts set forth in Sections III and IV above. A release  
7 as to one Defendant under this paragraph does not serve as a  
8 release to any other Defendant.

9 VI

10 NOTICES

11 All notices and correspondence required to be sent by  
12 Defendants to Plaintiff under this Decree shall be addressed as  
13 follows:

14 A. United States Attorney, 940 Front Street, San  
15 Diego, California, 92189, in care of Stephen V. Petix, Assistant  
16 United States Attorney.

17 B. Regional Counsel, United States Environmental  
18 Protection Agency, Region IX, 215 Fremont Street, San Francisco,  
19 California, 94105, in care of Jon K. Wactor, Assistant Regional  
20 Counsel.

21 C. Assistant Attorney General United States Department  
22 of Justice, Land and Natural Resources Division, 10th Street  
23 and Pennsylvania Ave., N.W., Washington, D.C. 20530, in care  
24 of Walker Smith, Trial Attorney.

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VII

CLAIMS AGAINST THE FUND

The Defendants agree not to assert any claims, demands or causes of action against the United States for reimbursement from the Hazardous Substances Response Trust Fund, 42 U.S.C. § 9631, including claims pursuant to Section 112 of CERCLA, 42 U.S.C. §9612.

VIII

COMPLIANCE WITH OTHER LAWS

This Decree shall not be construed in any way to relieve the Defendants from complying with any requirement of local, state or federal law.

IX

THIRD PARTIES

The provisions of this Consent Decree do not limit or affect the rights of the Defendants or the United States as against any third party.

X

RETENTION OF RESPONSE AUTHORITY

This Decree shall not be construed as limiting in any way the response and enforcement authority of the United States pursuant to Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607.

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XI

RETENTION OF JURISDICTION


The Court shall retain jurisdiction of this matter for the purpose of enforcing timely payments of the amounts set forth in Sections III and IV above.

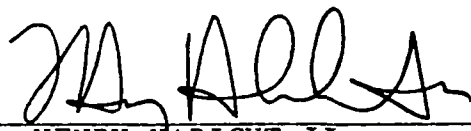
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TERMINATION

Upon payment of the amounts set forth in Sections III and IV above by each Defendant, the United States and that Defendant will jointly file a stipulation with the Court that the requirements of the Decree have been fully performed and this action may be terminated as to that Defendant. In the event that a joint stipulation cannot be obtained, the United States may move the Court to terminate the Decree as to any Defendant.

THE PARTIES HEREBY ENTER INTO THIS CONSENT DECREE AND SUBMIT IT TO THE COURT.

  
TERRY LOFTUS  
Wagner, Loftus, Chucas & McCue  
1125 W. Olive Street  
San Diego, California 92103  
Counsel for Melvyn Ingalls

  
F. HENRY HABICHT II  
Assistant Attorney General  
Land and Natural Resources  
Division  
U.S. Department of Justice



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4 MELVYN INCALLS

WALKER BLEDSOE SMITH

Trial Attorney  
Environmental Enforcement Section  
Land and Natural Resources Division  
United States Department of Justice  
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8 SCOTT CUMMINS

Oliver, Sullivan, Cummins  
& Wertz  
1010 Second Avenue, Suite 2301  
San Diego, California 92101  
Counsel for Herman Avilez

PETER K. NUNEZ  
United States Attorney

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14 HERMAN AVILEZ

STEVEN V. PETIX

Assistant United States Attorney  
940 Front Street  
San Diego, California 92189

15  
16  
17 ALBERT MANGRUM

1865 Citadel Court  
Chula Vista, California 92010  
in propria persona

THOMAS L. ADAMS, JR.

Assistant Administrator  
Office of Enforcement  
and Compliance Monitoring  
U.S. Environmental Protection Agency  
401 "M" Street, S.W.  
Washington, D.C. 20460

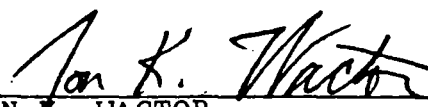
19  
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21  
22 JACK E. RUST

201 N. Front Street  
Burbank, California 91205  
in propria persona

ELLEN SPITALNIK

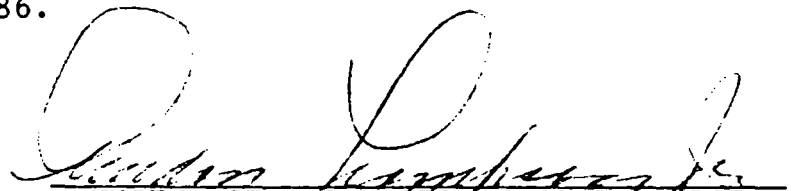
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JON K. WACTOR  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency - Region IX  
215 Fremont Street  
San Francisco, California 94105

INDUSTRIAL INTERNATIONAL CORP.  
Jack E. Rust, President  


This Consent Decree approved and entered on this 17  
day of October, 1986.

  
UNITED STATES DISTRICT COURT JUDGE

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